

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on September 18, 2012, 2012
Sacramento, California**

PRESENT:

Art R. Carter, Chairperson
Ed Lowry, Member
Judith Freyman, Member
Michael Wimberly, Executive Officer
Ursula Clemons, Presiding Administrative Law Judge
Martin Fassler, Presiding Administrative Law Judge
Jeff Mojcher, Chief Counsel
Kari Johnson, Industrial Relations Counsel III
Thomas Song, Industrial Relations Counsel II
Lee Berlin, Executive Secretary

MINUTES OF SEPTEMBER 5, 2012 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the September 5, 2012 Board Meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the September 5, 2012 Board Meeting.

ADMINISTRATIVE MATTERS:

(Information regarding the general administration of cases pending before the Appeals Board)

1. STATISTICS

(Review and discuss most current Board statistics)

ACTION: Executive Officer Wimberly reported on yearly statistics.

2. 2012 RULEMAKING MATTERS

(Discuss potential Board rulemaking changes)

ACTION: Counsel Johnson reported on the public hearing held on September 17, and outlined the next steps in the rulemaking process.

NEW BUSINESS:

(The Appeals Board hears and discusses new reports presented by staff.)

1. 2012/2013 BUDGET

(Review and discuss budget issues for the fiscal year)

ACTION: Executive Officer Wimberly discussed the current budget and travel expenses for the Administrative Law Judges and Legal staff in light of new travel restrictions.

OLD BUSINESS:

(The Appeals Board hears and/or discusses matters on a follow-up basis.)

ACTION: No report.

LEGISLATION:

(Review and discuss current legislation which may affect the Appeals Board)

ACTION: No report.

CHAIRPERSON'S REPORT:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

ACTION: Chairperson Carter reported on legislation that is currently on the Governor's desk awaiting signature. He also reported that he will not be attending the October 3 meeting of the Board and that he has authorized Ed Lowry as Acting Chairperson for that meeting.

BOARD MEMBERS' REPORTS:

(Hear reports from Board Members on activities and issues affecting the Appeals Board.)

ACTION: No report.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters and news from the Department and Appeals Board.)

ACTION: Executive Officer Wimberly reported that the Board's new toll-free telephone service has been installed, and also provided an update on the progress of the ORACLE system conversion and testing.

STAFF REPORTS:

(Reports from the Presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

ACTION: No report.

Any matter not completed at this meeting may be continued to subsequent meetings.

PUBLIC COMMENT:

(Public comment will be entertained during the discussion of each agenda item of the Open Meeting.)

ACTION: No report.

The Board recessed to its Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

ALIEM CHAO, 10-R2D3-1473 AND 1474

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge as amended. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge as amended.

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CONSOLIDATED ELECTRICAL DISTRIBUTORS, INC., 11-R1D1-0471

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

DAVEY TREE SERVICE, 08-R1D2-2706 THROUGH 2708

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

EMERALD METAL PRODUCTS, INC., 11-R3D1-1812

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

CHRISTOPHER P. RUIZ, A PROFESSIONAL LAW CORPORATION, 11-R3D1-3179

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

OTIS ELEVATOR COMPANY, 10-R3D2-3832 AND 3833

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

THE PRINTER WORKS, 10-R1D4-3844 AND 3845

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

ORDERS OF ADMINISTRATIVE LAW JUDGES:

AA BUILDERS & COMPANY, 11-R1D1-2114 THROUGH 2121 *

ALL AMERICAN WASH CO., 11-R6D2-1744 THROUGH 1752

ALLIED ENVIRONMENTAL INC., 11-R2D1-3214

ALPHA CONSTRUCTION CO., INC., 11-R4D1-3093

ANHEUSER-BUSCH, LLC., 12-R6D4-0474 THROUGH 0477

SUMANA ANUN, DDS, 12-R3D6-0574

ARMOUR STEEL COMPANY, INC., 11-R2D1-0410

B2B STAFFING SERVICES, INC., 12-R3D6-0217 THROUGH 0221

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BODEGA BAY PUD – WASTEWATER TREATMENT PLANT, 11-R6D3-2522
THROUGH 2524
NORM BOOK DBA EARL’S TRANSMISSIONS AUTO REPAIR, 12-R6D7-1407
AND 1408
BROTMAN MEDICAL CENTER, 12-R4D1-1457
CALIFORNIA DAIRIES INC., 09-R2D5-0404 THROUGH 0406
CARTER’S TRUCKING, INC., 11-R1D2-3078 AND 3079
CHAMP CONSTRUCTION, INC., 12-R6D7-1520
CHRISTIANSEN AMUSEMENTS CORP., 12-R3D6-0331
CIRCLE M CONTRACTORS, INC., 11-R3D2-2174 AND 2175
CLIPPINGER MOTORS, INC., 12-R3D6-0754
CONSTRUCTION EQUIPMENT COMPANY AKA LT FARMS, 11-R3D2-2278
COSTCO STORE #771, 11-R2D1-3102
CVUHSD HAWTHORNE HIGH, 11-R4D1-3233 AND 3234
DIMONT & ASSOCIATES, 12-R3D2-1630
ERIKA RECORDS INC., 12-R3D1-0953 THROUGH 0956 *
ERTEC ENVIRONMENTAL SYSTEMS, LLC, 11-R2D1-3026 THROUGH 3029
EZ LUBE, 12-R3D6-0580
FINELINE WOODWORKING INC., 11-R3D1-3223 AND 3224
FREMONTIA HORTICULTURAL, 11-R6D2-2804
FRESH AND EASY NEIGHBORHOOD MARKET, INC., 11-R6D2-2473
THROUGH 2474
GARCIA JUAREZ CONST. INC., DBA ONSITE KRUSHING CO., 12-R3D3-0783
AND 0784 *
G & K MANAGEMENT CO., INC., 11-R4D1-3305
GRANITE CONSRUCTION COMPANY, 11-R5D1-1170
ROBERT GRUEN, 11-R3D2-2323 AND 2324
IBITTA ENTERPRISES, INC., DBA NATURAL AND HEALTHY PRODUCTS,
11-R4D2-1579 AND 2048
IMPERIAL IRRIGATION DISTRICT, 12-R3D2-1863 AND 1864
JC FARM SERVICES, INC., 12-R2D1-0004
JLS INC., 11-R2D1-3136
J.R. CONSTRUCTION, INC., 11-R3D2-1509 AND 1510
KEENEY & SON FARMS, INC., 11-R2D1-0496
KING PRECISION GLASS, INC., 11-R3D6-3298 THROUGH 3302 *
GUSTAV KOVEN, 11-R4D1-3094
LARGO CONCRETE, INC., 12-R1D2-2145
MIRANDA LEUNG DBA CANTON RESTAURANT, 12-R6D7-1619
LYONS MAGNUS, INC., 11-R2D5-1195
MAG INSTRUMENT, INC., 12-R3D6-0575 AND 0576
MARCOR REMEDIATION INC., DBA MARCOR ENVIRONMENTAL, 11-R2D2-2988
DR. MARC MASKOWITZ, M.D. DBA PAIN CARE MEDICAL PRACTICE,
11-R2D1-0347
MATHESON TRI-GAS, 11-R1D4-0402
MILITARY AIRCRAFT PARTS, 11-R2D1-2704
MONTERO’S RECYCLING, 11-R2D1-2819

AL & GAYLE MONTNA ET AL DBA MONTNA FARMS DRYER, 11-R2D1-2351
THROUGH 2354
MOUNTAIN VIEW COLD STORAGE LLC., 12-R2D5-0482
MTR CONSTRUCTION, 12-R3D1-1236 & 12-R3D1-0869
NCM CONTRACTING GROUP GP, INC., 11-R2D2-2987
NCM CONTRACTING GROUP GP, INC., 11-R2D2-2990 TO 2991
NELSON PROPERTIES, 11-R2D1-3171
NEWLAND ENTITIES, INC., 11-R2D1-3213 *
N M N CONSTRUCTION INC., 12-R1D2-2178
NUMBER NINE, 11-R3D5-2854 THROUGH 2856
NUNES AG, INC. 11-R6D7-1627 AND 1628
O'DONOGHUE CONSTRUCTION, INC., 11-R1D1-0991 THROUGH 0994
PACIFIC GAS AND ELECTRIC COMPANY, 11-R2D2-0875
PARAMOUNT UNIFIED SCHOOL DISTRICT, 12-R3D6-0716
PARK AVENUE CUSTOMS, 10-R2D1-3394 AND 3395
PINNACLE COMPANIES, INC., 12-R3D6-0332
PN AUTOMOTIVE, LLC DBA HUNTINGTON BEACH MAZDA, 11-R3D1-3067
REDLANDS COMMUNITY HOSPITAL, 12-R3D3-1867
RED LION HOTELS CORPORATION, 11-R2D1-3104
R.L. HOLDERBEIN CONSTRUCTION, INC., 11-R6D1-2281 THROUGH 2283
ROCKET SCIENCE CALIFORNIA CORPORATION, 12-R6D7-1374
ROM INVESTMENTS, INC., 12-R4D1-0020 *
SAFEWAY, INC., 10-R1D3-2932 AND 2933
SEWERAGE COMMISSION – OROVILLE REGION (SC-OR), 12-R6D3-1551
SNAK-KING CORP., 12-R3D6-0615
STANDARD PACIFIC CORP. DBA STANDARD PACIFIC HOMES,
11-R3D2-2095 THROUGH 2097
STERLING M ENTERPRISE DBA LEE'S DELI, 11-R1D1-0726
SULLY-MILLER CONTRACTING COMPANY, 12-R3D3-0785 AND 0786
SUNLAND BUILDING SERVICES AND WINDOW CLEANING, 11-R4D1-3230
THROUGH 3232
SUN WEST FRUIT CO., INC., 10-R2D5-2624 AND 2625
TERRA FORM, INC., 12-R4D2-0334
THE CARPET COMPANY, 12-R1D5-0598
THE DOT PRINTER INC., 12-R3D1-0570
THERMALAIR INC., 11-R3D5-2743
TOM & PERRY CHARTER DBA T & P FARMS, 08-R2D3-4349 THROUGH 4351
TRICO CONVERTING, 11-R3D1-1570 AND 1571
TRIMM'S SCAFFODING, INC., 11-R6D7-2045
JOE EDDIE TRUJILLO, DBA JET CONCRETE, 12-R3D6-0577
UNITED PARCEL SERVICE, 11-R1D3-2191 AND 2192
UNIVERSAL CUSTOM DISPLAY, 10-R2D1-4062 THROUGH 4064
USS PSCO INDUSTRIES, 11-R6D3-0240 AND 0241 *
USS-POSCO INDUSTRIES, LLC., 11-R2D2-0487 *
WALGREEN COMPANY, 11-R1D1-3201
WESTMINSTER SCHOOL DISTRICT, 12-R3D1-0483

WIGHTMAN ENTERPRISES INC. DBA CERTIFIED STAFF LINK, 11-R2D1-1335
THROUGH 1337
WINCO FOODS, 12-R2D4-1075
WWL VEHICLE SERVICES AMERICAS, INC., 11-R3D5-2940

CUN PING XIAO DBA FUJI BUFFET, 12-R6D7-1586

ACTION: Member Lowry moved that the Board approve these Orders of Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Orders of Administrative Law Judges. Orders with asterisks are deemed approved as amended

ORDERS DISMISSING APPEALS:

Z FOODS, INC., 10-R2D5-3355 THROUGH 3358

ACTION: Member Lowry moved that the Board approve this Order Dismissing Appeal from an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Order Dismissing Appeal from an Administrative Law Judge.

MATTERS HELD OVER FROM PREVIOUS MEETINGS:

PETITIONS FOR RECONSIDERATION:

(The Division of Occupational Safety & Health and the Employer each has the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

BLUE DIAMOND GROWERS, 10-R2D1-1280 AND 1281
McDINIS RESTAURANT CORPORATION, 12-R6D5-9092

SIERRA FOREST PRODUCTS, 09-R2D5-3979

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to deny these Petitions for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to deny these Petitions for Reconsideration.

CALIFORNIA ERECTORS, INC., 10-R1D2-2772 THROUGH 2775

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to grant this Petition for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to grant this Petition for Reconsideration.

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

MOUNTAIN CASCADE, INC., 12-R2D3-9096

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

GOD BLESS TIRES, 11-R6D7-0972 & 0973

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3793 & 3794

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

NCA ENTERTAINMENT, INC. DBA GREG'S RIDES, 11-R3D2-2740

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

NCA ENTERTAINMENT, INC. DBA GREG'S RIDES, 11-R3D2-2774

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

MATTERS PENDING RECONSIDERATION:

A-1 PROTECTIVE SERVICES, INC., 10-R1D1-1592

ALLIED SALES & DISTRIBUTION, INC., 11-R6D2-0480

AC TRANSIT, 08-R1D4-0135

AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786

ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655

BOBERG ENGINEERING & CONTRACTING, INC., 06-R3D3-4963

BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239 THROUGH 2241

BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445

AND 3448

BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563

C.C. MYERS, INC., 08-R1D1-952 THROUGH 955

C & L BLUE, INC., 11-R4D1-2942

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C & L BLUE, INC., 11-R4D1-2943 THROUGH 2945
CENTRAL VALLEY ENGINEERING & ASPHALT, INC.
08-R2D1 5001 AND 5002
COFFMAN SPECIALTIES, INC., 10-R3D3-3532
COMMERCIAL METAL FORMING, 09-R3D1-1592
CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960
CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387
CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362
DENIO'S ROSEVILLE FARMERS MARKET & AUCTION INC. 11-R2D1-2431
DISTRIBUTION CENTER MANAGEMENT GROUP (DCMG), 11-R3D3-2896
ECO BAY SERVICES, INC., 10-R1D1-1233 THROUGH 1236
EPSILON ELECTRONICS, INC. DBA POWER ACOUSTIK ELECTRONICS,
09-R6D2-2325 THROUGH 2332
EZ MIX, INC., 08-R4D3-1898
GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687
HOME DEPOT, 10-R3D6-3284
HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389
IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272
IRWIN INDUSTRIES, 08-R6D4-1454
LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844
LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714
LION RAISINS, INC., 08-R2D5-2253 AND 2254
MARINE TERMINALS, 08-R6D2-1920
MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791
ORANGE COUNTY FIRE AUTHORITY, 10-R3D1-3667
OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022
PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864
PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING,
INC., 08-R2D1-0025 AND 0026
POUK & STEINLE, INC., 09-R3D3-0491
ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048
JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
SDCCD – CONTINUING EDUCATION N C CENTER, 11-R3D2-1196
SDUSD – PATRICK HENRY HIGH SCHOOL, 11-R3D2-1296 AND 1297
SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055
SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025
SMUD, 08-R2D1-4887 THROUGH 4889
MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 08-R2D1-3414
THROUGH 3418
STAFFCHEX, 10-R4D3-2456 THROUGH 2458
SUNRISE GROWERES FROZSUN FOODS, 09-R4D3-2850
A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
A. TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION, 09-R4D5-0459
AND 0460

A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 10-R5D1-3029

LEGISLATION:

PENDING LITIGATION

1. MCI WORLDCOM, 34-2008-00006043-CU-WM-GDS (DOSH v. OSHAB) (00-440)
ACTION: Chief Counsel Mojcher provided an update on this matter.
2. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)
3. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
4. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
5. WPCS INTERNATIONAL SUISUN CITY, INC., 34-2010-80000430
(09- 9280/9281)
6. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-800006047 (07-
R5D1-3611)
7. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP,
34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
8. SMUD, 34-2010-80000723 (08-R2D1-4887)
9. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
10. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
11. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-
0188~0191)
12. GUILLAUME GRAPEVINE NURSERY, INC., 34-2011-800001010
(08-R2D1-3273)
ACTION: Chief Counsel Mojcher gave a status update on this matter.
13. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459
THROUGH 2461)
14. FLATIRON CONSTRUCTION CORP, 34-2012-800001029 (10-R4D1-2789)
15. HOLLANDER HOME FASHION, BS-135444 (10-R4D2-3704)

16. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039
(07-R2D3-0275)

ACTION: Chief Counsel Mojcher reported on the status of this matter.

17. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)

18. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)

19. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)

20. DUININCK BROS., INC., 34-2012-80001129 (06-2871)

21. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)

COURT OF APPEAL:

1. JERLANE, INC., D060844 (2007-00056381) (01-4344 and 4345)

ACTION: Chief Counsel Mojcher provided an update on this matter.

PERSONNEL: *(Issues regarding staff)*

ACTION: No report.

The Closed Session adjourned at 12:10 p.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. The meeting was adjourned at 12:11 p.m.